IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.288/2002

Reserved on.31.5.2007

Decided on.10.7.2007

Malkiat Singh **…Petitioner.**

Versus

State of H.P. & others. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.yes*

For the petitioner : **Mr. Bhupender Gupta, Sr. Advocate with Mr. Neeraj Gupta, Advocate.**

For the respondents **Mr. M.S. Chandel, Advocate General with Ms. Meenakashi Sharma, Dy. Advocate General for respondents No. 1 and 2.**

Mr. H.K. Bhardwaj, Advocate for respondents No. 3 & 4.

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition which can be culled out from the pleadings of the parties are that the petitioner was owner in possession of land measuring 692 kanals 6 marlas situate in village Behdala, Post Office Behdala, Tehsil and District Una, H.P. The petitioner had sold land measuring 69 kanals 1 marla prior to the year 1971. The State Legislature had enacted the Act called 'H.P. Ceiling on Land Holding Act, 1972'. The proceedings were taken under the H.P. Ceiling on Land Holding Act, 1972 and land measuring 341 kanals 4 marlas only of the petitioner was declared to be surplus and vested in the State of Himachal Pradesh. He made an application to the Collector, Una,

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? yes

District Una, H.P. for recalling the order of vestment of the land on 28.8.1986. He had made a specific prayer for re-opening of case No. 78 of 1974. The Collector, Una made a reference to the Financial Commissioner (Revenue) for passing appropriate orders. The Financial Commissioner (Revenue) treated the application/representation as revision petition and by exercising the powers under section 20 (3) of the H.P. Ceiling on Land Holding Act, 1972 accepted the recommendations of the District Collector, Una and quashed the order dated 9.12.1972 passed by the Collector holding the land of the petitioner to be surplus. Consequently the matter was remanded back to the District collector, Una for decision afresh on 18.11.1988. The Collector, Una after receiving the report from the Tehsildar, Una passed the order on 24.2.1990 declaring that land owner did not come within the purview of the H.P. Ceiling on Land Holding Act, 1972 and had vacated the draft statement issued to the petitioner and amount of compensation already received by him was directed to be deposited back on or before 9.3.1990. In sequel to the orders passed by the Collector, Una dated 24.2.1990; petitioner deposited the amount of compensation on 12.3.1990. The Settlement Collector granted the requisite permission for correction of entries on 8.10.1995. The mutation was also attested in favour of the petitioner.

It appears from the pleadings of the parties that the respondents No.3 to 6 had approached this Court by way of CWP No. 158/2000 against the order passed by the Collector dated 24.2.1990. During the pendency of CWP No. 158/2000, Under Secretary (Revenue) filed a short affidavit stating therein that the Government had made a reference to the Financial Commissioner (Appeals) for taking appropriate action in exercising the revisional jurisdiction pertaining to the impugned order. Consequently the Court had directed the respondent No.2 to decide the

revision within a period of three months vide order dated 3rd October, 2001 and the parties were directed to appear before him on 19.10.2001. The Financial Commissioner (Appeals) vide order dated 12.12.2001 had quashed and set aside the orders passed by the Collector dated 24.2.1990. The Financial Commissioner (Appeals) had declared land measuring 322.6 kanals as surplus.

Mr. Bhupender Gupta, Sr. Advocate had strenuously argued that the order passed by the Financial Commissioner (Appeals) dated 12.12.2001 is without jurisdiction. Mr. Gupta also contended that the order was passed by the Collector, Una on 24.2.1990 and the same could not be set aside after a period of more than 11 years. He further contended that the word 'any time' used in section 20 (3) of the H.P. Ceiling on Land Holding Act, 1972 connotes that the same has to be exercised within a reasonable time.

The learned Advocate General had supported the order dated 12.12.2001.

Mr. H.K. Bhardwaj, Advocate appearing on behalf of respondents No. 3 and 4 had also supported the order dated 12.12.2001 and contended that the period of ten years cannot be termed unreasonable in the peculiar facts and circumstances of the case.

I have heard the parties and perused the record.

The scenario which emerges from the above noted facts is that the petitioner's land measuring 341 kanals 13 marlas was declared surplus on 9.12.1974. An application was preferred before the Collector on 28.8.1986 for re-opening of the case bearing No. 78 of 1974. The Collector has made a reference to the Financial Commissioner. The Financial Commissioner accepted the reference made by the Collector and quashed and set aside the order of the District Collector dated

9.12.1974. The Collector had called the report from the field agency i.e. Tehsildar, Una and on the basis of his report passed order on 24.2.1990 by holding that the petitioner's land was not covered under the provisions of the H.P. Ceiling on Land Holding Act, 1972. The petitioner was directed to deposit the compensation on or before 9.3.1990. He had deposited the same in the treasury. The necessary corrections were made in the classification of land and the mutation was also attested.

Before the contentions of the learned Advocates are considered, it will be apt to quote section 20 of the H.P. Ceiling on Land Holding Act, 1972 which reads as under:

> **"20. Appeal, review and revision.- (1) Any person aggrieved by any decision or order of the Collector may within sixty days from the date of the decision or order prefer an appeal to the Commissioner;**
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> **Provided that the Commissioner may entertain the appeal after the expiry of the said period of sixty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.**
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> **(2) Any person aggrieved by an order of the Commissioner made under sub-section (1) may, within ninety days from the date of order, file a revision petition before the Financial Commissioner so as to challenge the legality or propriety of such order and the Financial Commissioner may pass such order as he may deem fit. The order of the Financial Commissioner shall be final.**
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> **(3) Notwithstanding anything contained in the foregoing sub-sections, the Financial Commissioner may <u>at any time</u> call for the record of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order, and may pass such order in relation thereto as he may deem fit."**

The Court during the course of hearing had directed the learned Advocate General to produce the record to enable it to understand how

the matter was taken up by the Financial Commissioner (Appeals). The Financial Commissioner (Appeals) had stated in his order dated 12.12.2001 that the communication sent by the Secretary (Revenue) was treated as information and the matter was taken up as 'revision' suo motu to determine the legality of the orders. The copy of the letter dated 12th September, 2000 on the basis of which the Financial Commissioner (Appeals) had exercised the suo motu powers under section 20 (3) of the H.P. Ceiling on Land Holding, 1972 is available on the record produced by the State and is reproduced below in its entirety:

"No. Rev. B.E. (3)-6/2000
Government of Himachal Pradesh
Department of Revenue.

From

F.C.-cum-Secretary (Revenue) to the
Government of Himachal Pradesh.

To

The F.C. (Appeal) to the
Govt. of Himachal Pradesh.

Dated Shimla-171 002, the 12th September, 2000.

Madam,

I am directed to bring to your kind notice that a case No. 78/74 titled Malkiat Singh V/S State was decided by your Hon'ble Court on 18.11.1988 on a reference made by the Distt. Collector, Una in which the case was remanded to the Distt. Collector, Una to decide the ceiling proceedings afresh. The initial ceiling proceedings were conducted by the Collector under Ceiling Act, Una on 9.12.1974, in which the land owner, Malkiat Singh was allowed to held 316 Kanals 10 Marlas of land and 341 Kanals 4 Marlas was ordered to vest in the Govt. of H.P. Later the said Malkiat Singh made an application to the Distt. Collector, Una requesting therein that the Gair Mumkin area were required to be exempted from the vestment in to the State Govt. under the provisions of Ceiling Law and he was entitled to the said land. The Distt. Collector, Una made reference to

the F.C. (R and Appeal) on the said application, who set aside the order dated 9.12.74 and remanded the case to the Distt. Collector as mentioned above.

Consequently, the Distt. Collector vide his order dated 24.2.1990 decided the case in which he allowed an area of 341-4 Kanals to Sh. Malkiat Singh which area was earlier vested into the State Govt. It is relevant to point out that the permission to review the previous order of the Collector was sought by the Collector only for 98-8 kanals whereas in his final order he allowed the exemption to the tune of 341-4 kanal. Besides, that the Ceiling Act does not provide any exemption for Gair Mumkin land from the operation of Ceiling Law, nor the said Collector cited any law or provision on which the exemption have been ordered in favour of said Malkiat Singh.

In view of the above facts and circumstances the case needs serious reconsideration and your Honour is accordingly requested to call for the record of the case and examine the entire proceedings and pass the appropriate order under the circumstances as brought out herein above.

Yours faithfully,

Sd/-
Under Secretary (Revenue) to the
Government of Himachal Pradesh"

It is thus evident that the aforesaid letter dated 12th September, 2000 has been treated as information for exercising the suo motu powers by the Financial Commissioner (Appeals). The Court had directed the Financial Commissioner (Appeals) to decide the revision within a period of three months vide order dated 3.10.2001 and the parties were directed to appear before the Financial Commissioner on 19.10.2001. The order was passed by the Collector, Una vide order dated 24.2.1990 which has been set aside by the Financial Commissioner (Appeals) on 12.12.2001. Sub Section (3) of Section 20 of the H.P. Ceiling

on Land Holding Act, 1972 provides that the Financial Commissioner may at any time call for the record of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order, and may pass such order in relation thereto as he may deem fit. The only reason assigned by the Financial Commissioner for exercising the suo motu powers under sub-section (3) of section 20 of the H.P. Ceiling on Land Holding Act, 1972 after 11 years is that mere afflux of time could not come in his way to go into the illegalities and irregularities committed during the course of proceedings.

The Court has now to consider what does the expression 'at any time' as mentioned in sub-section (3) of section 20 of the H.P. Ceiling on Land Holding Act, 1972 means. The Hon'ble Supreme Court has explained the term 'at any time' in ***Purshotam Lal Dhawan v. Diwan Chaman Lal and another***, AIR 1961 SC 1371 as under:

> **"Learned counsel for the appellant raised before us the following two points: (1) The revision to the Deputy Custodian-General was barred by time. (2) On the date when the allotment made to the appellant was cancelled, the Deputy Custodian-General had no power to cancel the allotment.**
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> **To appreciate the first contention some relevant dates may be given. The order of the Additional Custodian was passed on August 25, 1952. The said order was communicated to the first respondent on September 11, 1952. The revision was filed on October 10, 1952. On the date of the filing of the revision only the Deputy Custodian was made a party but later on the Dhawan Group was impleaded in the revision in October, 1953. No application for excusing delay in preferring the revision against the said persons was made. It was contended before the Deputy Custodian-General that the revision petition was barred by time against the Dhawan Group but the Deputy Custodian-General rejected that argument and disposed of the petition on merits.**

The first question for consideration is whether the revision was barred by limitation in so far as the Dhawan Group was concerned. Some of the relevant provisions regulating the power of revision of the Custodian-General may be noticed. Section 27 of the Act says, "The Custodian-General may at any time either on his own motion or on application made to him in this behalf call for the record of any proceedings in which any Custodian has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he things fit." Under the proviso to that section, 'the Custodian-General shall not pass an order under the sub section prejudicial to any person without giving him a reasonable opportunity of being heard." In exercise of the powers conferred by S. 56 of the Act, the Central Government made the following rules among others.

> **"Rule 31. (5) Any petition for revision when made to the Custodian-General shall ordinarily be made within sixty days of the date of the order sought to be revised. The petition shall be presented in person or through a legal practitioner or a recognized agent or may be sent by registered post. The petition shall be accompanied by a copy of the order sought to be revised and also by a copy of the original order unless the Revision Authority dispenses with the production of any such copy."**

In contrast to the said provisions, R. 31(1) dealing with appeals says,

"All appeals under the Act shall when they lie to the Custodian, be filed within thirty days of the date of the order appealed against and when they lie to the Custodian-General, within sixty days of such date."

Section 27 of the Act concerns a plenary power of revision on the Custodian-General and it empowers him to exercise his revisional powers either suo motu or on application made in that behalf at any time. The phrase "at any time" indicates that the power of the Custodian-General is uncontrolled by any time factor, but only by the scope of the Act within which he functions. The Central Government

cannot obviously make a rule unless S. 56 of the Act confers on it an express power to impose a time fetter on the Custodian-General's power. We do not find any such power conferred on the Central Government under S. 56 of the Act. So the rule can only by read consistent with the power conferred on the Custodian-General under S. 27 of the Act. That must have been the reason why R. 31(5) does not prescribe any limitation on the Custodian-General to exercise suo motu his revisional power. Even in the case of an application for revision filed before him it is said that ordinarily it shall be filed within sixty days. The use of the word "ordinarily" indicates that the period of sixty days is not a period of limitation but only a rule of guidance for the petitioners as well as for the Custodian-General. It is within the discretion of the Custodian-General to entertain revision petitions after sixty days, but the rule indicates to him that the reasonable period for entertaining a revision is sixty days. The difference in the phraseology of sub-rules (1) and (5) of R. 31 of the Rules also leads to the same conclusion, for in the matter of appeals a period of limitation of thirty days when made to the Custodian and sixty days when it lies to the Custodian-General is prescribed whereas no such rigid period has been laid down in the case of a revision. If R. 31(5) is so read, its provisions will not conflict with those of S. 27 of the Act; and in that event they would be valid. The construction suggested by learned counsel for the appellant may lend scope to the argument that the rule is ultra vires the statute, for when a section says that there is no time limit for entertaining a revision, a rule cannot say that it shall be filed within a particular time. The argument that the principle underlying S. 5 of the Limitation Act applies to a petition for revision under Section 27 of the Act has no force. Section 5 of the Limitation Act applies to an appeal for which a period of limitation is prescribed and it empowers the court to admit the appeal after the period of limitation, if the applicant satisfied it that he has sufficient reason for not preferring the appeal within the prescribed time. The principle thereunder cannot be made applicable to a revision petition under S. 27 of the Act in

respect of which no period of limitation is prescribed. At the same time we must make it clear that the powers of the Custodian-General under S. 27, read with R. 31(5), are not intended to be exercised arbitrarily. Being a judicial power he shall exercise his discretion reasonably and it is for him to consider whether in a particular case he should entertain a revision beyond the period of sixty days stated in R. 31 (5). In this case we cannot say that the Custodian-General had acted perversely or unreasonably in entertaining the revision. The revision was filed in time. The Dhawan Group was made party at the subsequent stage as the Custodian-General rightly thought that any order he would make in favour of the appellant might prejudice the Dhawan Group. After giving them a reasonable opportunity of being heard within the meaning of the proviso to S. 27 (1) of the Act, he made the order. The Custodian-General, therefore, acted reasonably within his powers. This objection is overruled."

The apex Court in ***State of Gujarat V. Patel Raghav Natha and others***, AIR 1969 SC 1297 has held as under:

"The question arises whether the Commissioner can revise an order made under Section 65 at any time. It is true that there is no period of limitation prescribed under Section 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised.

It seems to us that Section 65 itself indicates the length of the reasonable time within which the Commissioner must act under Section 211. Under section 65 of the Code if the Collector does not inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading

sections 211 and 65 together it seeks to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission. In this case the Commissioner set aside the order of the Collector on October 12, 1961, i.e. more than a year after the order, and it seems to us that this order was passed too late."

The High Court of Gujarat in ***Bhagwanji Bawanji Patel Vs. State of Gujarat and another***, AIR 1971 Gujarat 64 has opined as under:

"In the alternative, it was contended by Mr. Padia that even if for a moment, it was open to the State Government to revise its own order contained either in the letter of 23.8.1960 or the decision dated 10.10.1959 of the Commissioner of Rajkot Division in respect of the same land, such powers in revision have to be exercised within a reasonable time. It would be nearly more than seven years after the order was passed by the Commissioner that the State Government has chosen to issue notice in exercise of those powers under Section 211 of the Code and that such a long period is certainly unreasonable in the circumstances of the case. In support thereof, he invited a reference to the decision in the case of State of Gujarat v. Patel Raghav Nath, AIR 1969 SC 1297. The Supreme Court while considering the effect of the exercise of revisional jurisdiction of the State Government under Section 211 read with Section 65 of the Land Revenue Code, held that the powers of revision under section 211 of the Code must be exercised within a reasonable time. The relevant observation runs thus:-

> **"It is true that there is no period of limitation prescribed under section 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the**

facts of the case and the nature of the order which is being revised.

In that case, however, three months time was considered to be quite reasonable time within which the revisional powers should have been exercised. Now it is true that Section 211 does not lay down any restriction on the power of the State Government in exercising its powers of revision under Section 211 of the Code as so far no change was made by the Legislature therein in spite of the observations of the Full Bench of the Bombay high Court in the case of the State of Bombay v. Chhaganlal Gangaram Lavar, reported in 56 Bom LR 1084 at p. 1095 = (AIR 1955 Bom 1 at p.4) (FB). Those observations are as under:

> **"…….it is rather extraordinary that there is no period of limitation prescribed for the exercise of the revisional powers of Government under Section 211. Therefore, the result may well be that after several years Government may interfere with a title or with titles and disturb the scrutiny of a tenure created a long time back. It is a matter for consideration whether the Legislature should not at least impose a time limit upon the exercise of revisional powers under section 211, because if an improper or illegal order is made by a subordinate revenue officer, surely Government would have notice of it within a reasonable time. It is also a matter for consideration for the Government whether apart from any legislative provision they should not impose upon themselves some limitation of time in the exercise of their powers under section 211."**

Much though no such restriction has been placed by the State Government in the exercise of such powers in view of the decision of the Supreme Court in the case referred to above, we have to consider as to what can be considered reasonable time within which such a power under section 211 should be exercised by the State Government. Mr. Padia's suggestion was that the reasonable period in the circumstances of this case should not be taken as more than three months or ninety days as contemplated under section 205 of the Land Revenue

Code. Section 205 speaks of the period within which an appeal must be brought. As provided therein, no appeal shall be brought after the expiration of sixty days if the decision or order complained of have been passed by an officer inferior in rank to a Collector or a Superintendent of Survey in their respective department; or after the expiration of ninety days in any other case. That, however, cannot apply when the powers of revision are required to be exercised by the State Government. It is also true that in the case of AIR 1969 SC 1297 (supra) when the Supreme Court thought that the reasonable time in which revisional powers should have been exercised would be three months had its basis on a consideration of the fact that under Section 65 of the Code if the Collector does not inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. That was enough indication and a period of three months was, therefore, considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Then the Supreme Court observed as under:

> **"Reading sections 211 and 65 together it seeks to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission. In this case the Commissioner set aside the order of the Collector on October 12, 1961, i.e. more than a year after the order, and it seems to us that this order was passed too late."**

So far as the facts and circumstances of this case are concerned as already observed hereabove, the State was a party-respondent in the appeal filed by this petition in respect of the land before the Commissioner of Rajkot Division, Rajkot. Naturally therefore, any order passed against the respondent-State in that appeal can be taken to be within its

knowledge, and the State Government which had revisional powers under Section 211 of the Code, could have easily looked into the matter and passed suitable orders after hearing the petitioner-appellant in the matter. Not only the State Government remained quite, but when in October 1960 Mr. Jayarambhai Patel brought to its notice the illegality committed by the Commissioner in passing such an order in that appeal, it can be taken to have looked into it and affirmed the order of the Commissioner as saying that it did not see and find any reason to interfere with the decision. That happened so far back as on 23.8.60. Going further a notification under S. 4 of the Land Acquisition Act was issued on 27.8.1965 for acquiring the same for public purpose and a subsequent notification under Section 6 was also issued by the Government. It was only after that or by about the time when the acquisition proceedings were pending before the Land Acquisition Officer the State Government chose to reconsider the decision given by the Commissioner and that was sought to be done in the exercise of its powers under Section 211 of the Land Revenue Code. Thus, it was on 14.4.1967 that a notice Ex."1" was issued against the petitioner and others for showing cause why the earlier orders in respect of the land should not be set aside. In other words, the facts of this case and the circumstances connected therewith make it abundantly clear that if the State Government or its Officers really intended to exercise its powers under Section 211 of the Land Revenue Code as it now proposes to do viz. to annul the said order, it being invalid, it should have done so long ago, and at any rate and in any event within three months from 1.10.1959 the date when the application was made by Mr. Jayarambhai Patel, bringing to the notice of the State Government about the illegality committed by the Commissioner in that appeal. That much period would be quite reasonable under the circumstances of the matter. The State Government cannot keep the sword hanging on any such person in respect of his property by choosing to act and revise the order at its sweet will, which may be after seven years as it sought to be done in this case. Now if on the other

hand any such order was passed against this petitioner-appellant by the Commissioner, he would have been obliged to move the State Government for reversal thereof, if permissible under Section 211 of the Code, within three months or so as at any rate he would have to file a suit within one year under Art. 14 of the First Schedule of the Indian Limitation Act, 1908 and cannot wait till the State Government decides anything in that matter. That Art. 14 is incorporated in Art. 100 of the Indian Limitation Act as amended by Act 36 of 1963. That Art. 100 refers to a suit for altering or setting aside any act or order of the Officer of the Government in his official capacity and such a suit has to be brought within one year from the date of the act or order of the officer as the case may be. In other words, the Legislature has thought it proper to provide for one year as a period within which any part affected by such act or order passed by the officer of the Government could file a suit and there is no reason why the State Government also should not do so, if it were so affected by any such order such as the order of the Commissioner in the present case by revising the same under Section 211 of the Land Revenue Code. The maximum period, it may be able to claim, cannot be more than a year from the date of the Commissioner's order, and to say that it can do so after any length of time as is sought to be done in this case viz. after about seven years or so, cannot be called at all reasonable. It had thus no right to revise the Commissioner's order after a period of seven years or so."

The Apex Court has held in ***Gram Panchayat, Village Kanonda, Tehsil Bahadurgarh, District Rohtak Versus Director, Consolidation of Holdings, Haryana, Chandigarh and others*** 1989 Supp (2) SCC 465 that what is a reasonable time is always a question of fact depending upon the facts and circumstances of each case. Their Lordships have held as under:

"It is undoubted that when there is no limitation prescribed for exercise of the revisional power under section 42 against the schemes prepared or confirmed or repartition made, it would

be exercised within a reasonable time. What is a reasonable time is always a question of fact depending upon the facts and circumstances in each case. When legislature chose not to fix a particular period of limitation by judicial dicta it is not permissible to limit to a particular period. The long lapse of time may be a fact for the revisional authority to take into account in the light of the facts and circumstances obtainable in an appropriate case. No absolute or precise period of limitation could be predicated or laid. Take for instance the facts of this case. The previous Sarpanch is a beneficiary from the impugned order and has chosen not to take steps to have the scheme impugned by filing a revision under section 42 of the Act. The Gram Panchayat, being a juristic person, could not by itself except through the executive authority take any action against the scheme prepared by the Consolidation Officer to assail its legality or propriety by filing the revision. The revision petition was filed soon after the new Sarpanch came into office. Take another instance of a case where the officer concerned and the person benefited, in confabulation, have made a scheme and repartition affected in pursuance thereto and kept it in dark to the knowledge of the person affected by the scheme prepared or the repartition made. Until the person affected had actual knowledge, it is not possible to become aware of it. The limitation begins to run from the date of the knowledge of the fraud so played. It is always open to the affected person to come forward and say that for the first time he became aware of the scheme prepared or repartition made in pursuance thereof only when his rights are sought to be interfered with or exercise of the enjoyment of the property is interdicted. Therefore immediately within a reasonable time thereafter he is to file a revision before the State Government. Having had the knowledge of the impugned action if he stood by without taking any further action, it is always open to the other party to bring it to the notice of the State Government of the ground or the circumstances under which the revision petitioner when he became aware of the scheme prepared or the repartition made and he deliberately chose to acquiesce to it and if the State government is satisfied of the same, unless

satisfactory explanation for the delay is given, the State Government may decline to interfere with the impugned action or may decline to entertain the revision petition itself. Thus it could be seen that each case has to be angulated on its own given facts and circumstances as to the reasonable period of limitation within which the revisional power is to be filed. Even though more than 5 years time had elapsed from the date of the preparation of the scheme till date of the filing of the revision under section 42, there is sufficient ground in this case for the new Sarpanch in not filing a revision within 6 months from the date of the original scheme and the State Government, is well justified in exercising the power under Section 42. The High Court is unjustified in interfering with the order passed by the Consolidation Officer. Accordingly, the appeal is allowed. No costs."

The Apex Court in ***Ram Chand and others Versus Union of India and others,*** (1994) 1 SCC 44 has held that where no time limit is prescribed for prescribing the power, it should be exercised within a reasonable time. Their Lordships have held as under:

"The Parliament has recognized and taken note of the inaction and non-exercise of the statutory power on the part of the authorities, enjoined by the provisions of the Act to complete the acquisition proceedings within a reasonable time and because of that now a time limit has been fixed for making of the award, failing which the entire proceeding for acquisition shall lapse. But, can it be said that before the introduction of the aforesaid amendment in the Act, the authorities were at liberty to proceed with the acquisition proceedings, irrespective of any schedule or time frame and to complete the same as and when they desired? It is settled that in a statute where for exercise of power no time limit is fixed, it has to be exercised within a time which can be held to be reasonable. This aspect of the matter can be examined in the light of second proviso to Article 31-A of the Constitution, which in clear and unambiguous terms prohibits making of any law which does not contain a provision for payment of

compensation at a rate, which shall not be less than the market value thereof. The Act is consistent with the second proviso to Article 31-A, because it provides for payment of compensation at the market value of the land acquired. But, whether the constitutional and statutory requirement of the payment of the market value to the persons, whose lands have been compulsorily acquired, is not being circumvented and violated by keeping the land acquisition proceedings pending for more than a decade and half, without making the awards and paying the compensation, which has been pegged to the dates of notifications under sub-section (1) of Section 4 of the Act, which in the present cases had been issued 14 to 21 years before the making of the awards. If a person is paid compensation in the year 1980/1981 at the market rate, prevailing twenty years before, will that be compliance of the constitutional and statutory mandate? Ignoring the escalation of the market value of the lands, especially near the urban agglomeration or metropolitan cities, will amount to ignoring an earthquake and courts can certainly take judicial notice of the said fact. The interest and the solatium, which have to be paid under the provisions of the Act, are linked with the market value of the land with reference to the date of the notification under sub-section (1) of Section 4 of the Act. If a decision had been taken as early as in the year 1966, by issuance of declarations under section 6, that the lands belonging to the different cultivators, who held those lands within the ceiling limit for cultivation, were needed for public purpose, respondents should have taken steps for completion of the acquisition proceedings and payment of compensation at an early date. In the present cases, unless a justification is furnished on behalf of the respondents, can it be said that the statutory power of making an award under Section 11 has been exercised within a reasonable time from the date of the declaration under section 6? Due to escalation in prices of land, more so in this area, during the preceding two decades, in reality, the market rate, on the date of the notification under section 4 (1) is a mere fraction, of the rate prevailing at the time of its determination in the Award."

The Apex Court had an occasion to deal with sub-section (3) of section 20 of the H.P. Ceiling on Land Holding Act, 1972 in ***State of H.P. and others Versus Raj Kumar Brijender Singh and others***, (2004) 10 SCC 585. The Apex Court has held that though in sub section (3) of section 20 of the H.P. Ceiling on Land Holding Act, 1972, the power may be exercised by the Financial Commissioner at any time but that expression does not mean that there would not be time limit or in its infinite. Their Lordships have held as under:

> **"We are now left with the second question which was raised by the respondents before the High Court, namely, the delayed exercise of the power under sub-section (3) of section 20. As indicated above, the Financial Commissioner exercised the power after 15 years of the order of the Collector. It is true that sub-section (3) provides that such a power may be exercised at any time but this expression does not mean there would be no time limit or it is in infinity. All that is meant is that such powers should be exercised within a reasonable time. No fixed period of limitation may be laid but unreasonable delay in exercise of the power would tend to undo the things which have attained finality. It depends on the facts and circumstances of each case as to what is the reasonable time within which the power of suo motu action could be exercised. For example, in this case, as the appeal had been withdrawn but the Financial Commissioner had taken up the matter in exercise of his suo motu power, it could well be open for the Stet to submit that the facts and circumstances were such that it would be within reasonable time but as we have already noted that the order of the Collector which has been interfered with was passed in January 1976 and the appeal preferred by the State was also withdrawn sometime in March 1976. the learned counsel for the appellant was not able to point out such other special facts and circumstances by reason of which it could be said that exercise of suo motu power after 15 years of the order interfered with was within a reasonable time.**

That being the position in our view, the order of the Financial Commissioner stands vitiated having been passed after a long lapse of 15 years of the order which has been interfered with. Therefore, while holding that the Financial Commissioner would have power to proceed suo motu in a suitable case even though an appeal preferred before the lower appellate authority is withdrawn, maybe, by the State. Thus the view taken by the High Court is not sustainable. But the order of the Financial Commissioner suffers from the vice of the exercise of the power after unreasonable lapse of time and such delayed action on his part nullifies the order passed by him in exercise of power under sub section (3) of Section 20."

The Full Bench of this Court had considered the expression 'reasonable time' in ***Mangheru Versus State of H.P. and others***, 1981 Indian Law Reports (H.P. Series) 283. Their Lordships have held as under:

"Now, there is no dispute that the peculiar facts and circumstances of each case should determine 'a reasonable time'. For example, if a grantee has suppressed material facts or has obtained the allotment by playing a fraud or a deception 'the reasonable time' will have to be determined with reference to the time when the fraud or deception came to light. Various cases where a party had concealed material facts and succeeded in obtaining the allotment have come to our notice. We cannot allow a party to reap the fruits of his deception or fraud simply on the ground that it had successfully kept them concealed over a sufficiently long period of time. However, once the fraud is uncovered then action is required to be taken within a reasonable time thereafter. Article 56 of the limitation Act lays down a limitation of three years from the date of the knowledge of fraud, and we are of the opinion that it will be reasonable to lay down that ordinarily within a period of three years from the date of knowledge of fraud the suo motu powers can be exercised.

We, however, do not agree with the Division Bench that a period of one year is a reasonable time to exercise such

powers where the land is given for agriculture, horticulture, or for constructing water-mill or water channel. It appears that the reason given by the Division Bench is that the fruits of these operations could be reaped within one year. The Bench seems to have overlooked the provisions of rule 12. This rule grants a period of two years to the grantee for carrying on the operations for which the land has been granted. In other words, a grantee may wait for more than one year before carrying out the necessary operations. Proviso to this rule extends a period of two years in certain cases. It is only after the grantee has started utilizing the land granted to him that the grant will become public knowledge. And it is only thereafter that persons affected by it may challenge the grant. We are, therefore, of the opinion that ordinarily a period of three years should be considered reasonable for exercising the powers of review or revision where the grantee had not played a fraud or deception in obtaining the grant."

The larger Bench of Gujarat High Court in ***Shailesh Jadavji Varia Versus Sub-Registrar, Narmada Bhavan and others***, 1996 (2) G.L.H. 848 had considered the expression 'reasonable time' as under:

"Extensive arguments have been advanced by both the sides in connection with exercise of power by Registering Officer under sub-section (1) of Section 32-A of the Act. No time limit is fixed by the legislature as to within what period power under sub-section (1) of Section 31-A can be exercised. Thus, the statute is silent on the point, sub-section (4) of Section 32-A, which invests Collector with revisional power, however, prescribes period of two years (now six years) for exercise of suo motu power by him. Contention of the petitioners is that if the Collector who has been invested with revisional power can exercise it within a period of two years, it is inconceivable and absurd that such a power can be exercised by an officer lower in rank than the Collector at this sweet will without there being any outer limit. Such interpretation will make the provision arbitrary, unreasonable and ultra vires. Various decisions

were cited by the learned counsel of both the sides. Some of them are indeed relevant. Let us consider them.

The first leading decision on the point is State of Gujarat v. Patel Raghav Natha, AIR 1969 SC 1297. In that case, the Court was concerned with revisional powers of the Commissioner under section 211 of the Bombay Land Revenue Code, 1879. The petitioner applied to the Collector for grant of permission to convert agricultural land to non-agricultural use under Section 65. Initially the application was rejected but after remand the Collector granted permission on July 2, 1960. Pursuant to the order, Sanad was issued on July 27, 1960. The Municipal Committee of Rajkot objected to such grant but the objection was overruled. The Municipality approached the Commissioner by filing a revision application under Section 211 which was allowed and the order of the Collector was set aside "on October 2, 1961, i.e. after a period of more than one year. The petitioner approached this Court by filing a petition which was accepted and the order passed by the Commissioner was set aside. The State approached the Supreme Court.

The question before the Supreme Court was within how much time revisional power under Section 211 could be exercised by revisional authority. The Supreme Court considered the provisions of Section 65 of the Code. Material part thereof reads as under:

"65. An occupant of land assessed or held for the purpose of agriculture is entitled by himself, his servants, tenants, agents, or other legal representatives, to erect farm-builings, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land, or its more convenient use for the purpose aforesaid.

But if any occupant wishes to use his holding or any part thereof for any other purpose the Collector's permission shall in the first place be applied for by the occupant.

The Collector on receipt of such application,

(a) shall send to the applicant a written acknowledgment of its receipt, and

(b) may, after due inquiry, either grant or refuse the permission applied for:

Provided that, where the Collector fails to inform the applicant of his decision on the application within a period of three months, the permission applied for shall be deemed to have been granted; such, period shall, if the Collector sends a written acknowledgment within seven days from the date of receipt of the application be reckoned from the date of the acknowledgment but in any other case it shall be reckoned from the date of receipt of the application." (Emphasis supplied.)

Taking into account the object underlying Section 65 and phraseology used therein, the Court observed:

"It seems to us that Section 65 itself indicates the length of the reasonable time within which the Commissioner must act under Section 211. Under Section 65 of the Code of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. This section 'shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading Sections 211 and 65 together it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission." (Emphasis supplied.)

Thus, in the light of the statutory provisions contained in Section' 65 of the Code and the circumstances which were likely to ensue in not passing any order within stipulated time, the Supreme Court observed that revisional power must be exercised within few months. Reading Sections 211 and 65 conjointly, the Court observed that the period of few months must be treated as reasonable because "after the grant of permission for building purposes, the occupant is likely to spend money on starting building operations at least within a

few months from the date of the permission. Thus, in the facts and circumstances of the case, and considering the nature of order sought to be revised, the Apex Court held that such reasonable period must be a period of few months. In no uncertain terms, however, the Supreme Court proceeded to observe that "the length of reasonable time must be determined by the facts of the case and the nature of the order which is being revised." (Emphasis supplied.)

In Bhagwanji Bavaji Patel v. State of Gujarat and Anr. 12 GLR 156, a Division Bench of this Court considered the observations of the Supreme Court in Patel Raghav Natha as laying down a rule that the power under Section 211 of the Code must be exercised within three months. In that case, the revisional power was exercised after seven years. The Court, therefore, held that it was not exercised within reasonable period. The Court, however, made following observations:

"Maximum period. it may be able to claim, cannot be more than a year from the date of the Commissioner's order, and to say that it can do so after any length of time as is sought to be done in this case, viz. after period of seven years or so cannot be called at all reasonable." (Emphasis supplied.)

In Minish K. Sheth and Ors. v. State of Gujarat and Ors. 26(1) GLR 101, a single Judge of this Court held that revisional power under Section 34 of the Urban Lands (Ceiling and Regulation) Act, 1976 can be exercised regardless of lapse of time. In Minish Sheth revisional power was exercised by the State Government after two years. Relying on Patel Raghav Natha, it was contended that the power could not have been exercised beyond few months. Repelling the contention, the Court observed:

"The Supreme Court has clearly referred to "this power" meaning thereby, the power under Section 211 of the Bombay Land Revenue Code. The Supreme Court has not laid down any general principle of universal applicability regarding the time limit within which the revisional jurisdiction can be exercised suo motu by the authority concerned. Where no period of limitation is prescribed under the statute, the Supreme Court has not laid down the principle that the

reasonable time and the length of reasonable time be determined by having recourse to the other provisions of the Act' which provides for appeal and prescribe the time limit for filing the appeal. As far as the aforesaid decision of the Supreme Court is concerned, it must be clear that the Supreme Court was dealing with the powers of the Government under Section 211 of the Bombay Land Revenue Code and the Supreme Court was not dealing with the powers of revisional authority to take up the matter in revision in all cases where no period of limitation has been prescribed under the statute. In that case also the Supreme Court has laid down that the reasonable time and the length of reasonable time must be determined by:

1. the facts of the case, and

2. the nature of the order sought to be revised.

Nowhere the Supreme Court has indicated that the reference be made to the provisions of the Act for finding out the reasonable time and the length of reasonable time.

It may be noted that Section 65 of the Bombay Land Revenue Code inter alia provides that an occupant of the land may apply to the Collector for permission to put the land for use to any other purpose other than agricultural purpose. If the application is not decided within a prescribed time limit, i.e. three months, the Collector shall be deemed to have granted the permission sought for. Section also provides that whenever the land is put to use for a purpose unconnected with agriculture, the Collector may himself impose a fine upon the occupant of the land. Thus it is clear that the section deals with the rights of an individual to put his land to a particular use. There is a statutory embargo upon the user of the land. The land cannot be used for any other purpose except for agricultural purpose, unless the permission of the Collector is obtained. This embargo is removed if the office of the Collector does not take decision within a period of three months from the date of receipt of the application seeking permission to put the land for any other use. The provision is contained in the Bombay Land Revenue Code enacted in the year 1879. The provision restricts the property right of an

individual. An individual cannot use his property in the manner he likes without obtaining appropriate permission from the authority prescribed under the Code."

The Court concluded that simply because the power is sought to be exercised after a period of two years, it does not become unreasonable. Minish Sheth came to be considered by a Division Bench in Haresh Kantilal Vora v. Competent Authority & Additional Collector, Rajkot and Anr. 1992 (2) GLH 424. The Court referred to following observations from a decision of the Division Bench in L.P.A. No. 378 of 1983 decided on December 21, 1993:

"What is important is that the poser bestowed upon an authority should be exercised in a reasonable manner and within reasonable time. The time element enters in to consideration only from the limited point of view to see as to whether it is a genuine exercise of power. The exercise of power must be reasonable and the reasonableness would in its sweep include the time element also."

The Division Bench in Haresh Kantilal ruled that simply because the power is exercised after a particular period, the exercise of power does not become ipso facto bad in law. Mere lapse of time without anything more would not make exercise of power arbitrary or unreasonable.

Our attention was invited to a decision or a single Judge of this Court in M/s Jailaxmi Estate & Another v. State of Gujarat and Others. (Special Civil Application Nos. 2353 to 2374 of 1983, decided on September 8, 1993) wherein notices issued by revisional authority were quashed on the ground that they were issued after about 2 years. It was held that initiation of proceedings were bad as they were started after lapse of reasonable time. Mr. Shelat, however, placed on record a xerox copy of the decision of the Supreme Court in State of Gujarat and Others v. Jailaxmi Estate and Another, in Civil Appeal Nos. 4522-4543 of 1995 decided on November 30, 1995 by which the above decision of this Court was reversed. Obviously, therefore, the decision of this court has lost its efficacy.

In S. B. Gurubaxsingh v. Union of India, AIR 1976 SC 1115, the Supreme 4 Court was called upon to consider the ambit and scope of revisional power of Government under Section 20 of the Bengal Finance' (Sales Tax) Act, 1941. An argument was advanced that it would be unjust, unreasonable and impracticable if there is no bar of limitation inasmuch as in that case, proceedings can be initiated at any time notwithstanding unreasonable long period. Negativing the contention, their Lordships observed;

"Apropos the fourth and the last submission of the appellant, suffice it to say that even assuming that the revisional. power cannot be exercised suo motu after an unduly long delay, on the facts of this case it is plain that it was not so done. Within a few months of the passing of the appellate order by the Assistant Commissioner, the Commissioner proceeded to revise and revised the said order. There was no undue or unreasonable delay made by the Commissioner. It may be stated here that an appeal has to be filed by an assessee within the prescribed time and so also a time-limit has been prescribed for the assessee to move in revision. The appeal or the revision filed by an .assessee can be exercised in due course. No time limit has been prescribed for it. It may well be that for an exercise of the suo motu power of revision also, the revisional authority has to initiate the proceeding within a reasonable time. Any unreasonable delay in exercise may affect its validity. What is a reasonable time, however, will depend upon the facts of each case. (Emphasis supplied.)

Finally, we may refer to a recent decision of the Hon'ble Supreme Court in State of Orissa and Others v. Vrundaban Sharma and Another, (1995) Supp. (3) SCC 249. In Vrundaban Sharma, tenancy rights were conferred by a Tehsildar without obtaining prior confirmation of Board of Revenue which was a condition precedent. When the Board came to know about the action of by Tehsildar, it quashed the order but by that time a period of twenty seven years was over. It was contended that though no period of limitation was prescribed, the power could have been exercised within reasonable period and by no means, period of twenty-seven years could be said to be

reasonable. Considering the provisions of the Act and referring various decisions including Patel Raghav Natha, their Lordships observed;

"It is, therefore, settled law that when the revisional power was conferred to effectuate a purpose, it is to be exercised in a reasonable manner which inheres the concept of its exercise within a reasonable time. Absence of limitation is an assurance to exercise the power with caution or circumspection to effectuate the purpose of the Act, or to prevent miscarriage of justice or violation of the provisions of the Act or misuse or abuse of the power by the lower authorities or fraud or suppression. Length of time depends on the factual scenario in a given case. Take a case that patta was obtained fraudulently in collusion with the officers and it comes to the notice of the authorities after a long lapse of time. Does it lie in the mouth of the party to the fraud to plead limitation to get away with the order? Does lapse of time an excuse to refrain from exercising the revisional power to unravel fraud and to set it right? The answers would be no. (Emphasis supplied.)

From the aforesaid decisions, there is no doubt in our minds that the power under sub-section (1) of Section 32-A of the Act can be exercised within reasonable period and no outer limit can be fixed for exercise of such power. The decision in Patel Raghav Natha, in our considered opinion, cannot be read as laying down universal rule applicable to all statutes, at all times and under all circumstances without reference to the scheme of the Act, underlying object to grant revisional power and consequences which may ensue therefrom that revisional powers must be exercised within, particular period. Their Lordships also, were conscious and mindful of all such situations which is reflected from the observations to the effect that "the length of reasonable time must be determined by the facts of the case and the nature of the order which is being revised".

A Division Bench of this Court in ***Amar Nath and another Versus Sate of H.P. and others***, 2002 (1) Shimla.L.C. 236 has held that though

there is no period of limitation prescribed for exercising suo motu power but such power is to be exercised within a reasonable time. Their Lordships have held as under:

> **"In Gram Panchayat, Village Kanonda v. Director, Consolidation of Holdings, Haryana, (1989) Supp (2) SCC 465, in a concurring judgment, K. Ramaswamy, J. stated:**
>
> > **"It is undoubted that when there is no limitation prescribed for exercise of the revisional power under section 42 against the schemes prepared or confirmed or repartition made, it would be exercised within a reasonable time. What is a reasonable time is always a question of fact depending upon the facts and circumstances in each case. When legislature chose not to fix a particular period of limitation by judicial dicta it is not permissible to limit to a particular period. The long lapse of time may be a fact for the revisional authority to take into account in the light of the facts and circumstances obtainable in an appropriate case. No absolute or precise period of limitation could be predicated or laid.**
>
> **For the foregoing reasons, in our considered opinion, it must be held that even if an aggrieved party has not lodged objections and/or filed appeal(s) before the authorities under the Act, it is open to him to invoke revisional jurisdiction of the State Government under Section 54 of the Act and such a revision cannot be dismissed as not maintainable merely on the ground that the person aggrieved had not lodged objections and/or filed appeal(s). Similarly, it is open to the State Government to exercise revisional jurisdiction suo motu with a view to satisfying itself as to the matters covered by Section 54 of the Act. There is no period of limitation and such power can be exercised either suo motu or at the instance of the aggrieved party. Such powers, however, should be exercised within a reasonable time. The concept of reasonable time is flexible, elastic and cannot be placed in straight jacket formula and length of reasonable time must be**

decided in the light of the facts and circumstances of each individual case.

The questions are answered accordingly. Now, let the matters be placed for appropriate orders and disposal in accordance with law."

This Court in ***Surinder Singh V/s State of H.P. & others***, Latest HLJ 2007 (1) 466 has held that the Chief Settlement Commissioner has to exercise the revisional jurisdiction suo motu within a reasonable time and the expression 'at any time' did not mean indefinite in time. The Hon'ble Single Judge has held as under:

"In the present case, the property "Fountain Bleaue Villa" was transferred to the predecessor-in-interest of the respondent No.5 in the year 1966 and this property was subsequently sold to respondent No.5 in July 1978. Therefore, the respondent No.5 was well aware of the area in occupation of the petitioner. No steps were taken by the respondent No.5 for thirteen years till she filed petition before the Chief Settlement Commissioner in the year 1993. In these circumstances, it was not open to the Chief Settlement Commissioner to have exercised his suo motu powers of revision under Section 4 of the Act. The question is accordingly answered."

The upshot of the above discussion is that the Deputy Commissioner (Collector) had passed the order on 24.2.1990. The petitioner had deposited the amount of compensation on 12.3.1990. The Collector Settlement, Kangra passed order on 8.10.1995 regarding correct classification of the land. The mutations were attested vide Annexure PK. The Financial Commissioner had treated the information dated 12th September, 2000 as information and the matter was accordingly treated as revision suo motu on 19.10.2001. The power has been exercised by the Financial Commissioner after 11 years from the date of the order passed by the Collector, Una dated 24.2.1990

Accordingly the order of the Financial Commissioner stands vitiated having been passed after a long period of more than 11 years and such delayed action on his part nullifies the orders dated 12.12.2001 in exercise of the powers under sub section (3) of Section 20 of the H.P. Ceiling on Land Holding Act, 1972.

Consequently this writ petition is allowed. Order Annexure PL is quashed and set aside and order passed by the Collector dated 24.2.1990 is restored and maintained. There shall be no order as to costs.

(Rajiv Sharma), Judge

10.7.2007
Awasthi